



Malawi

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President Bakili Muluzi of the United Democratic Front (UDF) party led the Republic of Malawi, which in 1999 held its second democratic multi-party presidential and parliamentary elections since independence in 1964. Independent observers concluded that the elections were free and substantially fair; however, there was limited opposition access to media and problems in voter registration, and the opposition lost appeals of the results in the courts. The 10 parliamentary by-elections held since 1999 have been marred by increasing violence, allegations of vote fraud, and contested results. Constitutional power was shared between a popularly elected president and the 193-member National Assembly. The UDF had 96 seats in the National Assembly; the Malawi Congress Party (MCP) had 61 seats; Alliance for Democracy (AFORD) had 30 seats; and there were 6 independent members. There was no clear-cut ideological difference among the three political parties. The Government respected the constitutional provisions for an independent judiciary; however, the judicial system was inefficient and lacked resources.

The National Police, headed by the Inspector General of Police under the Ministry of Home Affairs, were responsible for internal security. The police occasionally called on the army for support. Some members of the security forces committed serious human rights abuses.

The country was very poor, with a narrow economic base characterized by a small and highly concentrated industrial sector, low levels of foreign and domestic investment, and few mineral resources. The country's population was estimated to be 10,386,000, and agriculture dominated the economy, employing more than 80 percent of the labor force. The Government continued to move forward with its multisector privatization program and endorsed private sector participation in infrastructure. Wealth remained highly concentrated in the hands of a small elite. Annual per capita income was approximately \$178.

The Government generally respected the human rights of its citizens; however, there were serious problems in some areas. Police use of excessive force or negligence resulted in some unlawful killings, including deaths of detainees while in, or shortly after release from, police custody. The police continued to beat and otherwise abuse detainees and to use excessive force in handling criminal suspects. Prison conditions remained harsh and life threatening and resulted in a large number of deaths. Arbitrary arrest and detention were common, and lengthy pretrial detention was a serious problem. An inefficient, understaffed, and underfunded judicial system limited the ability of defendants to receive a timely, and in some cases, fair trial. Security forces at times infringed on some privacy rights. The Government generally respected freedom of speech and the press; however, there were some exceptions. Limited self-censorship existed. At times police used force against demonstrators. Violence against women was common, and women continued to experience severe societal discrimination. Abuse of children remained a problem. Child labor, including instances of forced child labor, also was a problem. There were reports of trafficking in persons. Mob violence triggered by anger over high levels of common crime resulted in mob executions of alleged criminals. Malawi was invited by the Community of Democracies' (CD) Convening Group to attend the November 2002 second CD Ministerial Meeting in Seoul, Republic of Korea, as a participant.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports of political killings; however, there were unlawful killings, including deaths of detainees while

in, or shortly after release from, police custody. These deaths involved possible use of excessive force or possible negligence. A large number of prisoners died largely due to harsh prison conditions (see Section 1.c.). Inquests into deaths in custody were not routine.

In November 2001, Evison Matafale, a popular reggae star who was arrested for allegedly distributing seditious documents, died while in police custody. An investigation by the Human Rights Commission (HRC) concluded that the police were not at fault and that he died of illness; however, his time in prison may have hastened his death.

In December 2001, police forcibly dispersed a student demonstration and shot and killed a student demonstrator in Zomba. The HRC determined that indiscriminate shots fired by police officers led to the death of the student and injury to a bystander. The HRC recommended that the Inspector General of Police prosecute the officers responsible for the shooting; however, it subsequently complained publicly of the lack of cooperation from the Inspector General. In September the student's family initiated a lawsuit against the Attorney General to seek compensation for loss of his life.

In August violent clashes between supporters of the ruling United Democratic Front (UDF) and National Democratic Alliance (NDA) pressure group resulted in the death of a UDF party official (see Section 2.b.).

Frustrated by inadequate law enforcement and rising crime, angry mobs sometimes resorted to vigilante justice in beating, stoning, or burning suspected criminals to death. For example, on September 23, an angry mob in Mulanje beat to death a boy for stealing a bicycle. No arrests were made; however, the police were conducting investigations. In March the Minister of Home Affairs acknowledged that reports of mob justice were increasing with the rise in thefts due to the food shortage. Between January and March, citizens in several communities killed more than 80 suspected thieves caught stealing maize. There was no action taken by authorities in these cases by year's end.

No action was likely to be taken against the members of a mob who in March 2001 in the town of Mulanje beat to death a man charged with armed robbery.

There was one person tried, convicted, and sentenced to death for serial killings in 2000; however, the death penalty still had not been carried out by year's end. The President stated publicly that the death penalty would not be used while he was in office.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices; however, police continued to beat and otherwise abuse detainees and to use excessive force in handling criminal suspects. The Inspectorate of Prisons was an investigative body mandated by the Constitution, and the findings of its 2000 report were considered indicative of prison conditions by domestic and international nongovernmental organizations (NGOs). The report noted that techniques used by police included beatings, physical assault, and the use of wire instead of handcuffs to restrain prisoners and to force confessions. Police sometimes hid these abuses by keeping prisoners in police custody until wounds healed before turning them over to the prison system for remand. The mistreatment partly was due to the mistaken belief of many police officers that the law required them to present a case (not just charges) to the court within 48 hours of arrest. Lack of financial resources for appropriate equipment, facilities, and training also contributed to mistreatment.

Police forcibly dispersed demonstrations during the year (see Section 2.b.).

Police continued efforts to improve investigative skills and to introduce the concept of victims' rights through workshops and other training exercises, particularly in the areas of sexual abuse and domestic violence (see Section 5). While higher-ranking officials demonstrated familiarity with new standards for the humane treatment of prisoners, their subordinates commonly employed unacceptable techniques. The Government continued to seek community involvement in its comprehensive reform of the police. The four pilot programs that provided community service alternative for some offenders and were initiated in 2000 had been introduced to all parts of the country by year's end. A refresher course on community service was conducted for lower ranking magistrates in October.

Prison conditions remained harsh and life threatening. The overcrowding, inadequate nutrition, substandard sanitation, and poor health facilities remained serious problems.

In October inmates at Zomba central prison rioted to protest inadequate food supplies. One inmate was shot and killed and four others were injured. During the year, a total of 29 inmates died in prison, mostly due to HIV/AIDS.

Although women were not kept in separate facilities, they were segregated within the prison compound and watched over by female guards. Although four prisons were supposed to have separate facilities for juveniles, the separation was inadequate in practice. In the other prisons, juveniles were incarcerated with adults. The law requires pretrial detainees to be held separately from convicted prisoners; however, many prisons could not comply with this law due to lack of space and inadequate facilities.

The Inspectorate of Prisons, domestic NGOs, and international NGOs were permitted to make visits to monitor prison conditions without government interference. NGOs reported good collaboration with prison authorities. During the year, NGOs visited many of the prisons; however, unlike in the previous year, there were no formal visits by the Prison Reform Committee.

d. Arbitrary Arrest, Detention, or Exile

The Constitution provides the accused the rights to challenge the legality of detention, to have access to legal counsel, and to be released on bail or informed of charges by a court of law within 48 hours; however, these rights seldom were respected in practice. The use of temporary remand warrants was widespread and used to circumvent the 48-hour rule. Police often resorted to beatings to obtain information deemed necessary to their cases (see Section 1.c.). In cases where the court determined that a defendant could not afford to supply his own counsel, legal services were provided by the Government. With few persons able to afford legal counsel, the country's seven public defenders could not represent all indigent detainees in a timely manner. Bail frequently was granted to reduce prison overcrowding. Its use often bore only a tenuous relationship to the merits of an individual's situation.

The prison system was meant to accommodate 4,500 inmates; however, during the year, there were 8,784 inmates, of whom 2,608 were pretrial detainees. There were 396 juveniles among the inmates of whom 163 were pretrial detainees. There were 89 women in prison and 39 were pretrial detainees. In July President Muluzi pardoned a woman who gave birth in prison after her story was highlighted in the press. Police were accused of arbitrary arrests due to political motives.

During the year, a priest was arrested for possession of seditious material (see Section 2.a.)

In September police arrested the regional governor for the Malawi Forum for Unity and Development (MAFUNDE) opposition party for honking his car horn in protest of a constitutional amendment to allow for three consecutive presidential terms (see Section 2.b.).

The Government did not use forced exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judicial system was inefficient and was handicapped by serious weaknesses, including poor record keeping, a shortage of attorneys and trained personnel, a heavy caseload, and a lack of resources. In August court operations were affected by a judicial support staff strike demanding better working conditions (see Section 6.b.). Human rights organizations widely criticized the strike because it increased prison congestion and denied many persons access to the courts.

The Constitution provides for a High Court, a Supreme Court of Appeal, and subordinate magistrate courts. The Chief Justice is appointed by the President and confirmed by the National Assembly. The President appoints other justices, following a recommendation by the Judicial Service Commission. All justices are appointed until the age of 65 and may be removed only for reasons of incompetence or misbehavior, as determined by the President and a majority of the Parliament.

In November 2001, members of the UDF ruling party submitted motions in the National Assembly to impeach three High Court justices on allegations of judicial misconduct and incompetence. The National Assembly curtailed the

Judicial Service Commission investigation into the cases and voted in favor of removal of the three justices. In December 2001, the President dropped all charges against one justice and ordered the Judicial Service Commission to reconvene to complete its assessment of the allegations against the remaining two justices. On May 7, President Muluzi pardoned the remaining two justices.

By law defendants have the right to a public trial but not to a trial by jury; however, in murder cases, the High Court used juries of 12 persons from the defendant's home district. Defendants also were entitled to an attorney, the right to present and challenge evidence and witnesses, and the right of appeal. However, the judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants. During the year, the Department of Public Prosecutions had 7 prosecuting attorneys and 11 paralegals. The paralegals served as lay prosecutors and prosecuted minor cases in the magistrate courts. Lack of funding and a shortage of attorneys created a backlog mainly in murder cases. In September, with funding from donors, the Director of Public Prosecution (DPP) stated that his office would prosecute 200 murder cases by December, and a total of 103 cases had been completed by year's end.

In April the High Court conducted a weeklong workshop for magistrates on laws related to corrupt practices. In June another training workshop was held on gender sensitization for magistrates and led to the drafting and publication of a manual for use by magistrate courts.

The 2000 amendment to the law provided for an expansion of the civil jurisdiction of magistrates, simplified small claims procedures, and gave magistrate courts jurisdiction over customary marriages. The amended law permitted more cases to be handled by magistrate courts that in the past had been referred to the High Court.

Juvenile offenders have special rights under the Constitution, including the right to be separated in custody from adults, to be treated in a manner that recognizes their age and the possibility for rehabilitation, and to be exempt from the punishment of life imprisonment without the possibility of release. However, the protections they are accorded in principle often were denied in practice, and many juvenile offenders were incarcerated with adults (see Section 1.c.).

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, the Government at times infringed on these rights. Army and police forces, in carrying out sweeps for illegal weapons, did not always obtain search warrants as required by law.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice; however, there were some exceptions. Limited self-censorship existed.

In September the President publicly criticized two opposition newspapers during a political rally for "irresponsible journalism." He criticized the Daily Times for reporting the comments of a local NGO representative that contradicted statements made by the President. The Chronicle was also criticized for attempting to incite civil unrest after an article was published quoting a letter by a group in the Malawi Muslim community that threatened "jihad" against Christians.

In October a ruling UDF parliamentarian assaulted a journalist on the premises of the National Assembly. The Speaker of the National Assembly announced his office would launch a formal inquiry on the matter; however, there were no results reported by year's end.

There were no further developments since the completion in August 2001 of a 2-year review of the Censorship Act by the Law Commission.

In June a Catholic priest was arrested in Kasungu for possession of seditious material. The priest had documents opposing the constitutional amendment to eliminate presidential term limits that he was translating into the local language. On June 17, he was released on bail, and there was no new information regarding the case by year's end.

In December 2001, a prominent businessman who is a member of "Concerned Citizens of Malawi" and the opposition pressure group NDA was arrested on charges of sedition. He reportedly wrote more than 100 letters criticizing government policy, the President's alleged shortcomings, and deteriorating democratic standards in the country. In April the High Court acquitted the businessman.

A broad spectrum of political and ideological opinion was available in the country's two dozen newspapers and usually without government interference. However, the Government continued to threaten and harass members of the media. For example, on May 20, the then Minister of State Responsible for Presidential Affairs, Dr. Dumbo Lemani, led a march by ruling UDF supporters to the Blantyre Newspapers Company, publishers of the two independent newspapers, The Daily Times and weekly Malawi News. The marchers threatened journalists who had written articles that opposed a bill to amend the Constitution to abolish term limits for the President.

The May 2001 case against a journalist, a printer, and four newspaper vendors who were arrested for distributing an edition of The Dispatch newspaper, which contained articles that the Government stated would "cause public fear and alarm," still was pending at year's end. The Dispatch newspaper has not published since the arrests.

The state-owned Malawi Broadcasting Corporation (MBC) dominated the radio market with its two stations, transmitting in major population centers throughout the country. News coverage and editorial content clearly were progovernment. In 2000 four employees of MBC allegedly were suspended due to insufficient loyalty to the ruling party. The Office of the Ombudsman began an investigation of the incident; however, the High Court ruled that the Ombudsman had no jurisdiction on labor related matters. The Ombudsman appealed to the Supreme Court, and in April the Supreme Court ruled in favor of the Ombudsman to proceed with the investigations. The investigation was ongoing at year's end.

There were 10 private radio stations; all broadcasting on FM frequencies with limited coverage and only in urban areas. There were two commercial stations broadcasting in Blantyre. There was a rural community radio station run by local women with the help of the Malawi Media Women's Association. In May 2001, the Malawi Institute of Journalism opened a private training-commercial radio station. Six religious stations broadcast in the capital and other major cities. Government-owned Television Malawi (MBC-TV) was the country's sole television broadcaster.

In violation of the law, the MBC consistently denied opposition candidates equal access to the media during the 1999 presidential and parliamentary election campaigns and the 2000 local government campaigns. In contrast slogans and songs of the ruling UDF party advertising upcoming political rallies were broadcast throughout the year. The Government limited television broadcasting with editorial control similar to that on MBC radio.

The Malawi Communication Regulatory Authority, an independent regulatory body, issued broadcasting licenses for radio, television, and Internet service providers (ISP). The Government split the state-owned Malawi Posts and Telecommunication Corporation into the Malawi Posts Corporation and the Malawi Telecommunications Limited in preparation for the privatization of MTL. There were two cellular telephone service providers and nine ISPs. On September 13, a third cellular telephone license was awarded.

The Government did not restrict academic freedom. In November 2001, police officers searched the home of a Chancellor College Professor on suspicion that he was in possession of documents that were "likely to cause a breach of peace." No documents were found, and no action was taken against the responsible police officers by year's end.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly; however, there were instances in which police limited this right.

Authorities routinely granted official permits, which are required by law for large meetings; however, in August police reportedly refused to grant opposition leaders permission to hold political rallies. Police cancelled the opposition MAFUNDE rallies in the southern region of the country citing potential violence between MAFUNDE and UDF party supporters. There were reports that police also cancelled rallies by the Malawi Congress Party.

In May President Muluzi issued a ban on all demonstrations related to a constitutional amendment bill to abolish presidential term limits. In June armed police in Blantyre stopped a public debate about the bill. On September 15, President Muluzi renewed the ban; however, on September 24, ruling UDF supporters demonstrated in the streets of Blantyre in support of President Muluzi's third-term bid despite the ban. No police action was taken against the demonstrators. On September 17, a member of MAFUNDE was arrested in Mzuzu for sounding his car horn in opposition to the constitutional amendment bill. He was charged with "conduct likely to cause breach of peace." On

September 19, he was granted bail; however, when his trial began on October 29, the charges had been amended to a traffic violation for "excessive use of a car horn." He was acquitted of all charges on November 21. On October 22, the High Court ruled the President's ban on demonstrations unconstitutional.

In November police used tear gas to disperse forcibly a demonstration in Blantyre organized by the Forum for the Defense of the Constitution (FDC) to protest a constitutional amendment to allow for three consecutive presidential terms. Violence erupted when members of the ruling UDF party attacked the FDC demonstrators.

In August violent clashes between supporters of the UDF and NDA resulted in the death of a UDF party official. On August 28, the Government issued an ultimatum to the NDA to register as a political party or risk an official government ban as an organization that promotes violence and subversion under section 64 of the Penal Code. The NDA contested the constitutionality of ultimatum in the High Court, and on September 15, the President extended the deadline for complying with the ultimatum to December. The High Court would not rule on the case until the deadline for registration had been missed by the NDA, and NDA representatives have publicly said that they plan to register the NDA as a party in January 2003.

In December 2001, police forcibly dispersed a student demonstration at Chancellor College in Zomba, which resulted in one death and one injury. The Joint Commission established by police and college representatives in December 2001 investigated the incident and in January referred a report to the University of Malawi's central office for review. No further actions were reported by year's end.

The Constitution provides for freedom of association, and the Government respected this right in practice. The Government required organizations, including political parties, to register with the Registrar General in the Ministry of Justice. Although no political party has been denied registration, the Government threatened to deregister the Malawi Forum for Unity and Development for using Malawi in its official name, which is a protected word under the law. However, on September 2, the Government granted approval of the use of Malawi in the party's name.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

There were no separate requirements for the recognition of religions, but religious groups must register with the Government. There were no reports that the Government refused to register any religious group during the year.

Some opposition politicians and clerics have raised Islam as a political issue. Citing the President's adherence to Islam, his contact with Islamic countries such as Libya, Iran, and Sudan, and the building of new mosques, some opposition politicians and clerics have accused the UDF of attempting to "Islamicize" the country.

Foreign Christian missionaries experienced occasional delays in renewing employment permits; however, this appeared to be the result of bureaucratic inefficiency rather than a deliberate government policy against foreign missionaries. Missionaries and charitable workers pay lower fees for employment permits than do other professionals.

There were generally amicable relations between the various religious communities; however, there were a small number of reports of clashes between Muslims and Christians.

In February the Muslim Association of Malawi (MAM) filed a complaint with the Religious Affairs Coordinator for the Office of President and Cabinet regarding the activities of a Christian missionary group in Mangochi district. The MAM accused the Christian group of entering mosques to convert Muslims to Christianity and of disseminating inflammatory publications about Islam. On February 22, the Religious Affairs Coordinator attempted to convene a forum with MAM, the Malawi Council of Churches, and leaders of the missionary group to discuss a peaceful resolution to the problem; however, the meeting was cancelled due to a lack of funding. In April the same missionary group contacted the Religious Affairs Coordinator, the Deputy Inspector General of Police, and the local Mangochi district police to report that they heard that the Muslim community in Mangochi district planned to harm them; however, there were no reports that any violence occurred.

On December 18, police arrested four members of the Seventh-Day Apostolic Church in Blantyre for allegedly instigating a clash with local Muslims. On December 15, a violent dispute occurred when church members began comparing Christianity and Jesus with Islam and Mohammed in a market square. Three persons were injured and property was damaged in the clash; however, there was no further action taken by year's end."

For a more detailed discussion see the 2002 International Religious Freedom Report.

d. Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government generally respected them in practice.

The law provides for the granting of asylum and refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol; however, there were long delays in the process. The Government cooperated with the office of the U.N. High Commissioner for Refugees (UNHCR) in providing protection and assistance to refugees. According to the UNHCR, the country hosted 9,674 refugees, primarily from the Democratic Republic of the Congo, Rwanda, and Burundi, at the country's refugee center in Dowa. The majority of refugees resided at the Dzaleka camp, and the UNHCR estimated that approximately 200 new refugees arrived each month. Although the Government granted refugee status, the law does not accept refugees for permanent resettlement and does not permit them to work or study; however, while no legal framework existed, the Government allowed refugees to seek both employment and educational opportunities. UNHCR, NGOs, and the Government collaborated to provide children in refugee camps with access to education. A new school was completed at the Dowa refugee camp in 2001.

The country has provided first asylum to numerous refugees and continued to provide first asylum to new refugees as required. Asylum applicants were granted hearings to make their case for asylum status. The Government denied asylum to many of the Rwandans and Congolese who either had requested asylum in another country or had the opportunity to do so.

There were no reports of the forced return of persons to a country where they feared persecution.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for citizens 18 years of age and older. International election observers found the 1999 presidential and parliamentary elections to be free and substantially fair; however, the electoral process was flawed, as opposition access to the broadcast media was limited; there were voter registration problems in some areas of the country; and the Electoral Commission at times displayed bias in favor of the ruling party. President Muluzi was reelected to serve a second 5-year term, defeating Gwanda Chakuamba, the joint presidential candidate of the two leading opposition parties, the MCP and AFORD. The opposition challenged the outcome of the presidential vote, and in May 2000, the High Court ruled in favor of the President. In October 2000, the Supreme Court of Appeal upheld the High Court ruling in favor of the President.

President Muluzi, First Vice President Justin Malewezi, and a 38-member cabinet exercise executive authority. The second vice-presidency remained vacant. The executive exerted considerable influence over the legislature; the legislature followed a hybrid parliamentary system, and consequently a number of Cabinet ministers also sit as Members of Parliament (M.P.'s).

On August 27, senior UDF officials stated that a constitutional amendment bill to allow the President to seek three consecutive terms would be introduced in the October session of Parliament. On September 6, the Government announced officially that it would introduce the bill in Parliament; however, the bill was neither introduced nor withdrawn in its entirety, and there was no action taken on the bill by year's end. President Muluzi banned all demonstrations relating to this amendment (see Section 2.b.).

Local government elections to select councilors and mayors, as mandated under the law, were held in November 2000, and were conducted in an open and transparent manner according to local and international observers; however, they were marked by low voter turnout, allegations of voter and candidate intimidation, and unequal access to the media. The ruling UDF won more than 70 percent of the seats; opposition parties and some NGOs criticized the Government for manipulating the process.

Although the Government did not prevent the operation of opposition political parties, the parties continued to allege that the Government used bribery and other inducements, including violence, to encourage opposition party divisions and defections of key personnel to the ruling party. In July the Anti-Corruption Bureau (ACB) began investigations of some opposition M.P.'s who allegedly were bribed to vote in favor of the constitutional amendment bill to abolish presidential term limits. The investigations were ongoing, and no indictments had been made against any political figures at year's end.

During the year, the authorities were accused of refusing to grant opposition leaders permission to hold political rallies (see Section 2.b.).

There were no laws that restricted the participation of women or ethnic minorities in the political process. There were 17 women in the 193-seat National Assembly, and there were 8 women in the 38-member Cabinet. Women were approximately 25 percent of the civil service. There were 2 women justices among the 22 Supreme and High Court justices. During the 1999 presidential and parliamentary elections, approximately 55 percent of registered voters were women.

A citizen of European origin, several citizens of mixed ethnicity, and one citizen of Asian origin were members of the National Assembly.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups operated without government restriction, training civic educators, advocating changes to existing laws and cultural practices, and investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

The Ombudsman was mandated by the Constitution to investigate and take legal action against government officials responsible for human rights violations and other abuses. The Ombudsman's freedom of action was circumscribed by legislation that requires a warrant and a 3-day waiting period to gain access to certain government records. The activities of the Ombudsman were subject to judicial review, and in a 2000 case involving MBC employees allegedly dismissed on political grounds, the Supreme Court upheld a constitutional provision that granted the Ombudsman discretionary authority to investigate any and all cases where it was alleged that a person has suffered injustices, except when there was a judicial remedy available (see Section 2.a.).

The Constitution provides for a National Compensation Tribunal (NCT) to adjudicate claims of criminal and civil liability against the former government. As of September, the NCT had registered more than 23,000 claims, of which 600 had been compensated fully and 7,000 had been awarded interim compensation payments. The NCT's original constitutional mandate did not permit the registration of new claimants after December 31, 2001 deadline; however, during the year, the registration deadline was extended until July 13, 2003. The extension of the deadline for registration could impact seriously NCT's estimated \$300 million (MK 24 billion) budget to cover 16,000 claims for 10 years. The NCT's lack of funds limited its ability to settle claims.

The constitutionally mandated HRC was charged to monitor, audit, and promote human rights provided for under the Constitution, and to carry out investigations regarding violations of any human rights. Despite limited resources, in September 2001, the HRC issued its 2000 Human Rights Report, which described 172 complaints of human rights violations such as overcrowding and poor sanitation in prisons, lack of proper medical attention to sick prisoners, political violence during the Kasungu by-elections, long periods of pretrial detention, and the lack of opposition access to the media during elections. The Government has refuted publicly the report's findings. In August and September, HRC conducted public hearings in major cities on political and religious intolerance. Both human rights groups and political leaders acknowledged that political violence had increased during the year. The 2001 HRC report was still in draft form at year's end.

Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The Constitution specifically provides for equal rights for women, forbids discrimination based on language or culture, and provides for equality and recognition before the law for every citizen; however, in practice the capacity of government institutions to assure equal rights for all citizens was limited.

Women

Domestic violence, especially wife beating, was common. Society has begun to take the problem of violence against women seriously. The press published frequent accounts of rape and abuse, and the judiciary continued to impose heavier penalties on those convicted of rape. However, domestic violence seldom was discussed openly by women. In April 2001, an NGO in Lilongwe established the country's first confidential shelter for women who were victims of physical or sexual abuse. Between April and December 2001, 72 women sought protection at the shelter. Police did not normally intervene in domestic disputes.

Press coverage of domestic violence increased substantially following a November 2001 conference called "Sixteen Days of Activism" sponsored by NGOs in cooperation with the Ministry of Gender and Community Service. NGOs sponsored subsequent workshops to inform local tribal leaders and journalists of the importance of legislation against domestic violence with a specific focus on spousal rape.

There was anecdotal evidence that a few small ethnic groups practiced female genital mutilation (FGM).

Trafficking in women and girls was a problem (see Section 6.f.).

Under the Constitution, women have the right to full and equal protection by law and may not be discriminated against on the basis of gender or marital status; however, in practice discrimination against women was pervasive, and women did not have opportunities equal to those available to men. Women had significantly lower levels of literacy, education, formal and nontraditional employment opportunities, and access to resources to increase agricultural productivity. The literacy rate among women between the ages of 15 and 45 was less than 37 percent. Male literacy in the same age group was approximately 45 percent.

Women often had less access to legal and financial assistance, and wives often were victims of discriminatory inheritance practices in which the majority of the estate was taken unlawfully by the deceased husband's family. Women usually were at a disadvantage in marriage, family, and property rights, but they have begun to speak out against abuse and discrimination. Households headed by women were represented disproportionately in the lowest quarter of income distribution. In a country where 85 percent of the population was rural, the majority of farmers were women; 70 percent of the rural female population farm full time. Typically women worked more hours than men to complete the same farm tasks because they rarely had comparable tools and equipment, and they remained responsible for all household tasks. Women had limited access to agricultural extension services, training, and credit. Some progress has been made in all of these areas with gender training for agricultural extension workers and the gradual introduction of rural credit programs for women. The participation of women in the limited formal labor market was particularly constrained; they constituted less than 5 percent of managerial and administrative staff.

The law provides for a minimum level of child support, widows' rights, and the right to maternity leave; however, only individuals who utilized the formal legal system benefited from these legal protections.

In 2000 women joined the army for the first time in noncombatant positions as a result of a 1994 revision in the government directive that previously had prohibited women from military service. The Government commissioned a female officer in August 2001, and during the year, there were new recruit classes of women, who were serving both as officers and as enlisted personnel in the armed forces. Female soldiers may only be deployed in combat as support personnel, such as in the communications field.

The Government addressed women's concerns through the Ministry of Gender and Community Services.

Children

The Constitution provides for equal treatment of children under the law, and during the year, the Government continued a high level of spending on children's health and welfare. The Government provided free primary education for all children, although education was not compulsory. Girls dropped out of school more frequently than boys did, and in the final year of primary school, 42 percent of students were girls. Despite recent significant gains in girls' access to education, large gaps remained between girls' and boys' achievement levels. Girls, especially in rural areas, historically had been unable to complete even a primary education and were therefore at a serious disadvantage in finding employment. Accepted economic and social practice hampered the ability of women and girls to gain an education. However, there were signs of improvement in education for girls. The 2002 Malawi Demographic Household and Education Data Survey's preliminary report indicated that there was not a large gender gap in primary school attendance between boys and girls; however, in secondary school the boys were more likely to attend than girls.

Well over half of the country's children live in poverty, mostly in rural areas. Children in rural households headed by women were among the poorest. Only one-third of children had easy access to safe drinking water. Infant mortality was high, and child malnutrition was a serious problem. A few charitable organizations attempted to reduce the number of child beggars in urban areas and find alternative care for them. The problem of street children worsened as the number of orphans whose parents died from HIV/AIDS increased. According to the National Statistic Office's Demographic and Health Survey of 2000, only 60 percent of children under age 15 lived with both of their biological parents; 23 percent of children under age 15 lived with only one parent, while 16 percent were orphans.

Extended family members normally cared for such children and other orphans.

FGM was performed on girls (see Section 5, Women).

There were societal patterns of abuse of children. The media also reported on the sexual abuse of children, especially in relation to traditional practices of initiation. While rites to initiate girls into their future adult roles still were secret, information suggested that abusive practices were widespread and quite damaging.

Child prostitution occurred (see Section 6.f.).

Persons with Disabilities

The Government has not mandated accessibility to buildings and services for persons with disabilities, but one of the national goals in the Constitution is to support persons with disabilities through greater access to public places, fair opportunities in employment, and full participation in all spheres of society. There were both public and privately supported schools and training centers, which assisted persons with disabilities. There also were several self-supporting businesses run by and for persons with disabilities. The Minister of State responsible for persons with disabilities was a cabinet-level position, which was held by a person with disabilities.

In December 2001, the Ministry responsible for persons with disabilities held a consultative workshop with representatives from NGOs and U.N. agencies to create a taskforce for the formulation of a new National Disability Policy (NDP). The draft NDP incorporated the views of interested parties and was awaiting review by various government ministries. The taskforce was charged with the development of a new NDP that addressed issues of equal opportunity and access for persons with disabilities.

Section 6 Worker Rights

a. The Right of Association

The law governs labor-management relations. Workers have the legal right to form and join trade unions; however, union membership was low due to the small percentage of the work force in the formal sector, the lack of awareness of worker rights and benefits, and a resistance on the part of many employees to join unions. Army personnel and police could not belong to trade unions, but other civil servants were allowed to form unions. Union leaders estimated that 12 percent of the formal sector workforce belonged to unions; however, accurate statistics on the numbers of union members were not available. Trade union rights have existed for 9 years, and labor relations still were evolving. Employers, labor unions, and the Government lacked sufficient knowledge of their legitimate roles in labor relations and disputes, which limited the effectiveness in the implementation and enforcement of the law; however the International Confederation of Free Trade Unions (ICFTU) charged that trade union rights were also limited by the resistance of some employers, including the Government, to respect these rights.

Unions must register with the Registrar of Trade Unions and Employers' Organizations in the Ministry of Labor and Vocational Training (MOLVT). At year's end, 22 unions were registered. There were no unusually difficult registration procedures. Unions were independent of the Government, parties, and other political forces.

The law prohibits antiunion discrimination by employers and requires that employers reinstate workers dismissed because of union activities. However, the ICFTU 2002 Annual Survey stated that District Education Officers were fired for their membership in the Teachers' Union of Malawi. The same survey said companies in the export processing zones (EPZs) were also resistant to union activity and that unions said they have little access to workers in the zones. Enforcement of legislation protecting the freedom of association by the Ministry of Labor was ineffective.

Unions may form or join federations and have the right to affiliate with and participate in international workers' organizations, with the permission of the Government. There were no restrictions on the number of union federations. There were two federations in the country: The Malawi Congress of Trade Unions (MCTU), with 19 affiliates; and the Congress of Malawi Trade Unions (COMATU), with 3 affiliates.

b. The Right to Organize and Bargain Collectively

Unions have the right to organize and bargain collectively. The law requires that at least 20 percent of employees

(excluding senior managerial staff) belong to a union before such a union can engage in collective bargaining at the enterprise level. The law requires at least 15 percent union membership for collective bargaining at the sector level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions included wage negotiation, dispute resolution, and industry-specific labor policy development. The law was not implemented effectively in practice due to the lack of sufficient knowledge of the law by employers, trade unions, and government officials (see Section 6.a.). In 2001 the National Bank of Malawi unilaterally abrogated an agreement with the Commercial, Industrial and Allied Workers' Union. Collective agreements were binding legally, and both parties must deposit them with the Registrar of Trade Unions.

The law allows members of a registered union to strike or go through a formal mediation process overseen by the MOLVT. A registered union must attempt to resolve the issue through mediation. A strike can only occur after all settlement procedures established in a collective agreement (an understanding, not necessarily signed, reached by both parties to attempt mediation) and conciliation efforts have failed. The law requires a notice in writing to the employer and the MOLVT at least 7 days before a strike. The law also forbids the temporary replacement of labor and allows peaceful picketing during strikes. Members of a registered union in "essential services" only have a limited right to strike. Essential services were specified as services whose interruption would endanger the life, health, or personal safety of the whole or part of the population; they were determined by the Industrial Relations Court (IRC) upon application by the Minister of Labor. The law provides similar procedures for lockouts. Laws do not prohibit specifically retaliation against strikers. There was no prohibition on actions against unions that were not registered legally. Arbitration rulings were enforceable legally. However, due to the lack of funding and 2-year case backlog, the IRC could not monitor cases and enforce the laws in practice adequately. During the year, the IRC conducted several sensitization workshops on labor laws. The IRC also established complaint centers throughout the country to facilitate access to its services.

In August judiciary support staff began a general strike that lasted 5 weeks. The strikers called for salary and benefits increases approved by Parliament in 2000. In September an interim agreement was reached between the support staff and the judiciary to end the strike; however, negotiations between the Judiciary and Treasury were ongoing on how to fund the agreement at year's end.

In May 2001, workers at the Lilongwe Water Board went on strike over pay and management corruption. Since water is an essential service, the Government could legally requisition a core workforce to maintain service; however, the Government declared the strike illegal and instructed the Water Board to fire all 350 employees. To be reinstated, workers were required to sign a statement saying they would not strike again and to accept their existing pay and working conditions. By August 2001, most of the employees had been reinstated; however, all the elected officers of the Water Employees Trade Union of Malawi remained suspended. The employer also stopped the allotment

In September 2001, medical workers from Queen Elizabeth Central Hospital in Blantyre went on strike after the hospital failed to grant salary increases that it promised to begin in July 2001. The hospital negotiated an initial settlement for a risk premium increase, and the 28 leaders of the strike were suspended and restricted from travel outside the country pending prosecution for endangering the health and welfare of patients. During the year, a total of 15 employees were indicted for conducting an illegal strike. In May the Office of the Ombudsman intervened in the case, and the case concluded in November when 10 employees were terminated for an illegal strike while 5 were permitted to return to their previous positions. All travel restrictions were lifted.

In October 2001, teachers began a series of sporadic strikes and work stoppages because of the differences between rural and urban salaries and benefits. During the year, differences in allowances were corrected. In January the Minister of Education threatened to punish any teacher who instigated a strike since the Government implemented the new allowances. There were reports that up to 50,000 teachers participated in the 2001 strikes in the rural areas.

At year's end, 20 firms held licenses to operate under EPZ status, and all were operational. The full range of labor regulations applied to the EPZs; however union organizers said they had little access to workers in the zones. According to the ICFTU, workers in EPZs were not able to exercise their trade union rights.

c. Prohibition of Forced or Bonded Labor

The Constitution prohibits forced or bonded labor, including by children; however, there were allegations that some large agricultural estates engaged in the practice, and one local NGO reported that in urban areas, it was common to find young girls working outside of their family as domestic servants, receiving little or no wages, and living in a state of indentured servitude (see Section 6.d.). According to the ICFTU, bonded labor involving entire families was

widespread on tobacco plantations. Tobacco tenants have exclusive arrangements, often unwritten with the estate owners to sell their crop and to buy inputs such as fertilizer, seed, and often food. These costs, in addition to rent charges, often were greater the artificially low price received for the tobacco crop, leading to a situation of debt and bonded labor to repay the input and other costs

d. Status of Child Labor Practices and Minimum Age for Employment

The Constitution defines children as persons under 16 years of age, and the law prohibits the employment of persons less than 14 years of age. It also prohibits the employment of children less than 18 years of age in work that was hazardous, harmful, or interferes with their education. Significant child labor in agricultural work and domestic service occurred largely as a result of extreme poverty and longstanding cultural traditions. Budgetary constraints largely precluded minimum work age and child labor law enforcement by police and MOLVT inspectors. There was significant child labor on tobacco and tea farms, subsistence farms, and in domestic service. There was no special legal restriction on children's work hours.

In 2000 the Ministry of Labor began a 12-month International Labor Organization (ILO) funded study to establish the magnitude of child labor and to use the results as a basis for drafting an action plan to implement ILO Convention 182 on the worst forms of child labor. In 2001 MOLVT conducted a pilot study and trained evaluators for the full study, which started in May. The study was expected to be finished by the first quarter of 2003.

During the year, there was at least one report of forced child labor.

e. Acceptable Conditions of Work

The MOLVT set separate urban and rural minimum wage rates based on recommendations of the Tripartite Wage Advisory Board (TWAB) composed of representatives of labor, government, and the private sector. However, the TWAB encountered problems due to inefficient organizational structure and inadequate funding, which hindered timely and accurate revision of the wage rate recommendations. The urban minimum wage amounted to approximately \$0.70 (MK 56) per day; in all other areas, it was approximately \$0.50 (MK 40) per day. Although minimum wage rates were raised in 2000, they did not provide a worker and family with a decent standard of living. Wage earners tended to supplement their incomes through farming activities. The MOLVT lacked the resources to enforce the minimum wage effectively. However, the minimum wage largely was irrelevant for the great majority of citizens, who earned their livelihood outside the formal wage sector.

The maximum legal workweek was 48 hours, with a mandatory weekly 24-hour rest period. The laws require payment for overtime work and prohibit compulsory overtime. In practice employers frequently violated statutory time restrictions.

The law includes extensive occupational health and safety standards. Enforcement of these standards by the MOLVT was erratic. Workers--particularly in industrial jobs--often worked without basic safety clothing and equipment. Workers dismissed for filing complaints about workplace conditions have the right to file a complaint at the labor office or sue the employer for wrongful dismissal. Workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment; however, given the low level of education of most workers and the high level of unemployment, they were unlikely to exercise this right.

Mechanisms for protecting internationally recognized worker rights were weak. There were serious manpower shortages at the Ministry of Labor; as a result, there were almost no labor standards inspections.

The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.

According to the Government "policy statement and new guidelines" for the issuance and renewal of employment permits (the temporary employment permit or "TEP"), foreign investors may employ foreign personnel in areas where there was a shortage of "suitable and qualified" citizens. The guidelines also mandated that processing times for TEP applications shall not exceed 40 working days. Although the TEP program appeared to function smoothly, the press reported delays in application processing for at least one major company.

f. Trafficking in Persons

The law does not prohibit trafficking in persons specifically, and there were reports of trafficking. The Penal Code contains several provisions relating to prostitution and indecency that could be used to prosecute traffickers;

however, there were no arrests or prosecutions of suspected traffickers during the year.

Although the age of sexual consent is 14, there was no age specified for the protection of minors from sexual exploitation, child prostitution, or child pornography. The belief that children were unlikely to be HIV positive and the widespread belief that sexual intercourse with virgins can cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the sexual exploitation of minors. Child prostitution occurred, but it was not considered a significant problem.

In October 2001, a bill was introduced in the National Assembly that proposed 14-year sentences for anyone convicted of promoting, managing, or transporting any person into or out of the country with the purpose of engaging that person in prostitution. The National Assembly deferred the bill during the October session for further review.

It was believed that Malawian women were trafficked to South Africa and Europe. For example, in 2001 the Ministry of Gender, Youth, and Community Services, the lead ministry on trafficking issues, reported seven cases of women being trafficked to South Africa and Netherlands to engage in prostitution after being lured by false job offers. Efforts to repatriate the seven women were unsuccessful due to a lack of resources. There was no indication of any police investigation of trafficking cases during the year.

The extent of the trafficking problem was undocumented, and neither the Government nor NGOs viewed it as a significant problem. There was scant media attention, and there was only one NGO focusing education campaigns on the problem of trafficking during the year. The police and the Ministry of Gender and Community Services handled any cases that arose.

There was no government funding for NGO services to victims of trafficking, and there was no training for government officials on how to provide assistance to trafficking victims.